

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
JULIUS JOHNSON, ) CASE NO. 09-20785 JPK  
 ) Chapter 7  
Debtor. )

ORDER DENYING DEBTORS [SIC] MOTION TO RECONSIDER  
THE ORDER OF OCTOBER 1, 2009 ["MOTION"]

The Motion was filed on October 2, 2009, and unfortunately it has had a somewhat convoluted and incorrect procedural history.

The Motion seeks to request the court to reconsider an order entered on September 30, 2009 by which the Chapter 7 Trustee's motion for turnover filed on September 3, 2009 was granted.<sup>1</sup> The filing of the motion was accompanied by docket record entry No. 29, which is a form of notice in the nature of that provided for by N.D.Ind.L.B.R. B-2002-2. There is no provision in applicable law or rules for the use of a "drop-dead" notice with respect to the relief requested by the motion, and that notice was totally invalid. However, because the notice was not accompanied by a certificate of service, the Clerk's office entered an order on October 7, 2009 which required the filing of a certificate of service of that notice upon all necessary parties. By docket record entries Nos. 33, 34, and 35, the debtor's counsel sought to correct the deficiencies in service of the notice. That was a nice gesture on the part of the debtor's counsel, but it was actually unnecessary. The court determines that the form of notice docketed as record entry No. 29, and any forms of notice included in record entries Nos. 33, 34 and 35, are invalid and void for any purpose. The court also determines that the order entered on October 7, 2009 should be vacated.

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<sup>1</sup> Although the Motion refers to an order entered on October 1, 2009, the court— in an abundance of accommodation to the debtor's counsel— will construe the motion to refer to the order entered on September 30, 2009. The court notes that because of the mis-designation of the order to which it relates, the Motion could be denied for that reason alone.

Customarily, the court would set a motion of the nature of the Motion for a hearing. However, the motion asserts no sustainable legal basis for any relief.

First, the motion is in part premised upon a Fed.R.Bankr.P. 9024/Fed.R.Civ.P. 60(b) ground of excusable neglect due to failure to file an objection to the Trustee's turnover motion within the required deadline. The basis for any Rule 60(b)(6) ground stated in the motion is inadequate. More importantly, the substantive defense to the motion for turnover stated in paragraph 5 of the Motion is that "the accounts which Trustee Yoon seeks to have turned over contained funds which are exempt pursuant to 11 U.S.C.A 522(d)(10)(A)." 11 U.S.C. § 522(d) states exemptions which may be claimed under 11 U.S.C. § 522(b)(2): because the State of Indiana has "opted out" of the federal exemptions provided by 11 U.S.C. § 522(d), pursuant to §522(b)(2) that exemption is not available to the debtor, and any exemption is determined by the Indiana exemptions, not by federal exemptions. Thus, the basis for exemption asserted by the debtor has no legal foundation. More importantly, and perhaps most importantly, the debtor's Schedule C states no exemption of the nature of that described in the motion, and thus again there is no sustainable basis for the motion because there is no exemption which the motion for turnover has violated.

IT IS ORDERED as follows:

1. The notices to creditors in docket record entries Nos. 29, 33, 34 and 35 are invalid for any purpose and are void.
2. The order entered on October 7, 2009 by the court is vacated.
3. The Motion is denied without prejudice.

Dated at Hammond, Indiana on December 30, 2009.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor  
Trustee, US Trustee